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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/666,439	09/22/2003	Ernesto Cohen	28,437-A	8312
7590	06/17/2004		EXAMINER HARRIS, STEPHANIE N	
Charles E. Temko 22 Marion Road Westport, CT 06880			ART UNIT 3636	PAPER NUMBER
DATE MAILED: 06/17/2004				

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/666,439

Applicant(s)

COHEN, ERNESTO

Examiner

Stephanie Harris

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-6 is/are pending in the application.
- 4a) Of the above claim(s) 5 and 6 is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-4 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 22 September 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. ____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date ____.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: ____.

DETAILED ACTION

Election/Restrictions

This application contains claims directed to the following patentably distinct species of the claimed invention: Species I: Figures 1-4; Species II: Figures 5 and 6.

Applicant is required under 35 U.S.C. 121 to elect a single disclosed species for prosecution on the merits to which the claims shall be restricted if no generic claim is finally held to be allowable. Currently, there are no generic claims.

Applicant is advised that a reply to this requirement must include an identification of the species that is elected consonant with this requirement, and a listing of all claims readable thereon, including any claims subsequently added. An argument that a claim is allowable or that all claims are generic is considered nonresponsive unless accompanied by an election.

Upon the allowance of a generic claim, applicant will be entitled to consideration of claims to additional species which are written in dependent form or otherwise include all the limitations of an allowed generic claim as provided by 37 CFR 1.141. If claims are added after the election, applicant must indicate which are readable upon the elected species. MPEP § 809.02(a).

Should applicant traverse on the ground that the species are not patentably distinct, applicant should submit evidence or identify such evidence now of record showing the species to be obvious variants or clearly admit on the record that this is the case. In either instance, if the examiner finds one of the inventions unpatentable over

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the prior art, the evidence or admission may be used in a rejection under 35

U.S.C. 103(a) of the other invention.

During a telephone conversation with Charles Temko on June 10, 2004 a provisional election was made without traverse to prosecute the invention of Species I, claims 1-4. Affirmation of this election must be made by applicant in replying to this Office action. Claims 5 and 6 are withdrawn from further consideration by the examiner, 37 CFR 1.142(b), as being drawn to a non-elected invention.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was ~~patented~~ or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 1, 3, and 4 are rejected under 35 U.S.C. 102(e) as being anticipated by Riley et al. (USPN 6709054).

Regarding claim 1, Riley discloses a slip cover (30) for an upholstered sofa or similar article of furniture comprising a plurality of interconnecting resilient textile panels forming a hollow shell with a continuous peripheral edge, and an elastic band (42)

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overlying the peripheral edge to retain the shell in taut condition upon the sofa (Col. 4, line 41- Col. 5, line 4).

Regarding claim 3, Riley discloses a unitary cover comprising a resilient textile fabric having a peripheral edge, elastic means for contracting the edge to maintain the cover upon the sofa. The cover includes a plurality of interconnected panels overlying the upper, front side and rear surfaces of a rectangular cushion forming part of the sofa. The panels include a rear panel having first and second parts in separate planes disposed at a mutual angle to provide a degree of excess material overlying the rear surface of the cushion whereby when the cushion is sat upon, forwardly extending stress exerted upon the panels of the cover will be accommodated by resiliently expanding, to resiliently contract when the sofa is vacated (Col. 4, line 41- Col. 5, line 4).

Regarding claim 4, the excess material formed by separate parts may be tucked beneath a lower edge of a back part of the sofa, and a resilient elongated tube (40) is positioned over the excess material to distribute stress over the width of the cover (Col. 4, lines 52-62).

Claim 1 is rejected under 35 U.S.C. 102(b) as being anticipated by Barattini et al. (USPN 4958886).

Regarding claim 1, Barattini discloses a slip cover that can be used on an upholstered sofa or similar article of furniture comprising a plurality of interconnecting resilient textile panels (2, 3) forming a hollow shell with a continuous peripheral edge,

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and an elastic band (8, 9) overlying the peripheral edge to retain the shell in taut condition upon the sofa as seen in Figure 1 (Abstract).

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claim2 is rejected under 35 U.S.C. 103(a) as being unpatentable over Riley et al. (USPN 6709054) in view of Chambers et al. (USPN 6736453).

Riley discloses the claimed invention except for the cover being formed of approximately 95% cotton and the remainder is comprised of elastic fibers.

Chambers discloses the use cotton and elastic fibers to form a seat cover (Abstract, Col. 4, line 51 – Col. 5, line 13).

It would have been obvious to one having ordinary skill in the art at the time the invention was made to a cover being formed of approximately 95% cotton and the remainder is comprised of elastic fibers, since it has been held to be within the general skill of a worker in the art to select a known material on the basis of suitability for the intended use as a matter of obvious design choice. In re Leshin, 125 USPQ 416.

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Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. The following patents are cited to further show the state of the art with respect to slip covers: FR 2685890, USPN 5676422, USPN 4790592, USPN 5664831, USPN 199575, USPN 4946221, USPN 5632068, US005829828A, US006409264B1, US006131995A, US006447059B1, US005265933A, and US005802681A.

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Stephanie Harris whose telephone number is 703-305-1838. The examiner can normally be reached on Monday-Friday from 9am to 3pm.


If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Pete Cuomo, can be reached on (703) 308-0827. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free):

SNH

June 13, 2004

Stephanie Harris
Examiner
Art Unit 3636


Peter M. Cuomo
Supervisory Patent Examiner
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